

REMARKS

The present amendment and remarks are in response to the Non-Final Office Action entered in the above identified case and mailed on February 25, 2009. Claims 1-56 are pending in the application. Claims 57-69 comprise non-elected claims resulting from a previous restriction requirement and have been withdrawn. Of the currently pending claims claim 1 is provisionally rejected on the grounds of nonstatutory obviousness-type double patenting is being unpatentable over claim 1 of co-pending application number 11/079,809 (US 2005/0267715). Claim 1 is further provisionally rejected on the grounds of nonstatutory obviousness-type double patenting is being unpatentable over claim 1 of co-pending application number 10/944,609 (US 2005/0267709). Claim 1 is further rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,549,864 to Potyralio (hereafter "Potyralio"). Claims 1-3, 39, 41, and 50-51 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,901,351 to Daw et al. (hereafter "Daw"). Claims 1-3, 39, 42 and 51 are further rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 7,181,654 to Fort et al. (hereafter "Ford"). Claim 1 is further rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. 2005/0267709 to Heavner et al. (hereafter "Heavner"). Claim 3 is rejected under 35 U.S.C. §103(a) as being unpatentable over Daw in view of the U.S. Patent No. 6,456,947 to Adamiak et al. (hereafter "Adamiak"). Finally, claims 52-53 and 56 are rejected under 35 U.S.C. §102(e) as being unpatentable over Daw in view of U.S. Patent No. 7,424,395 to Emigholz et al. Claims 4-8, 10-38, 42-49, and 54-55 were objected to as being dependent upon a rejected base claim.

The Examiner has indicated that these claims would be allowable if we written in independent form including all of the limitations of the base claim in any intervening claims.

As an initial matter, regarding the non-statutory obviousness type double patenting rejection, applicants note that independent claim 1 has been amended to include many of the features of canceled dependent claims 3 and 4. These claims were not objected to as being obvious over the claims of co-pending applications 11/079,809 and 10/944,609. By amending claim 1 in this manner Applicants respectfully submit that claim 1 is now distinguishable over the co-pending applications and the non-statutory obviousness type double patenting rejecting is no longer applicable.

With regard to the rejections under 35 U.S.C. § 103, Applicants have amended claims 15-7, 39, 41, 43-44, 47-48, and 51, canceled claims 2-4 and 42, 45-4649-50 and 54-56, and added new claims 70-76. The present amendments comprise a rewriting of the independent claims to include subject matter originally found in the dependent claims indicated by the Examiner as being allowable. For example, amended independent claim 1 now includes a number of steps relating to determining a block length for use in determining a statistical measure associated with a process parameter using measured data received during a period of time corresponding to the determined block length. The additional subject matter corresponds to the original subject matter of dependent claims 3 and 4 which have been canceled. Dependent claims 5, 6 and 7 have been amended to depend from claim 1. Similarly, claim 39 has been amended to include the features of otherwise allowable dependent claim 42, while dependent claims 40, 41, 43 and 44 has been amended to maintain consistency with amended claim 39. Claim 42 has been canceled.

Originally filed independent claim 51 has been amended to include the features of dependent claim 54 which the Examiner has indicated as being allowable. Claim 54 has been canceled.

New claim 70 corresponds to originally filed independent claim 39 but also includes the features of dependent claim 45 which the Examiner had indicated as being allowable. Claim 45 has been canceled. Similarly, new claim 71 also corresponds to originally filed independent claim 39 but also includes the features of dependent claim 46 which the Examiner has indicated as being allowable. Original claim 46 has been canceled. New claim 72 also corresponds to originally filed independent claim 39 but also includes many of the features of originally filed claim 47. Claims 47 and 48 have been amended to depend from new claim 72. New claim 73 also corresponds to originally filed independent claim 39 but also includes the features of dependent claim 49 which the Examiner has indicated as being allowable. Claim 49 has been canceled.

New claim 74 independent corresponds originally filed independent claim 51 but also and includes the features of dependent claim 55 which the Examiner has indicated as being allowable. Claim 55 has been canceled.

With these changes Applicants respectfully submit that all of the pending claims are in condition for allowance. Accordingly, Applicants request that the Examiner withdraw the rejections and issue a Notice of Allowance in the present case. However, if the Examiner has any questions about the present response, Examiner is encouraged to call applicants attorney at the number provided below.

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Respectfully submitted,

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